

copy in opinion

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Mr. Lester K. Billings, Director
Bureau of Hospital Services
17 Capitol Street
Concord, New Hampshire

CONCORD, N.H.

Dear Mr. Billings:

You have inquired by your letter of October 31, 1955, my opinion concerning the third paragraph of section II A 2 in the "Classification of Licensed Institutions" adopted by the Hospital Advisory Council pursuant to RSA 151:9. The paragraph in question relates to public nursing homes which provide a program of medical, nursing or other remedial care at a level which is essentially that of a hospital and hence require licensing under said RSA 151. The paragraph reads as follows:

"The license shall encompass all supplementary facilities and services for the domiciliary and custodial care of infirm patients as well as the facilities for medical, nursing, and other remedial care and shall take into consideration all environmental factors which might affect the health or safety of all persons admitted to the licensed institution. Specialized institutions falling into this general classification may be given a designation appropriate to the program conducted."

You ask whether, by virtue of this paragraph, application of the Hospital Licensing Law shall apply to all areas of a licensed institution despite the fact that certain areas would not, in and of themselves, require a license. Specifically, whether there would be licensure authority and supervision over a building of a county institution which houses only ambulatory aged persons where other facilities of the institution are required to be licensed as public nursing homes.

My answer to this is in the negative. RSA 151:2 requires that an institution be licensed which operates organized facilities for the diagnosis, treatment and care of two or more related persons suffering from illness, injury or deformity, or where obstetrical or other care is rendered. It is unquestioned that the

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caring for ambulatory aged persons who are not suffering from illness, injury or deformity, does not require licensing, and your Department lacks any authority for supervision under the Hospital Licensing Law. Nowhere is it provided by the statute, RSA 151, that facilities not requiring licensing shall be subject to the supervision of your Department merely and solely because they may be operated by an institution which, separate and distinct therefrom, operates a facility which does require a license.

While RSA 151:2 speaks of other care in connection with a requirement of license, this cannot be interpreted to mean care of the aged so as to bring it within the purview of the chapter when rendered by an institution with licensed facilities unless it were so interpreted in cases where there were no such licensed facilities. Such an interpretation would be clearly and manifestly erroneous. Apart from the above quoted chapter an examination of the proposed regulation would also lead to this conclusion. I refer to the introductory portion of II A, under which the paragraph in question will be found, and it states in part: "Institutions or institutional units which do not meet the specific definitions of a hospital but which provides a program of medical, nursing, or other remedial care at a level which it is essentially that of a hospital." This would seem to indicate that the regulation in question, by its own language, restricts its operation from the situation in question.

Nothing herein is intended to apply in any way to institutions licensed as public nursing homes which may provide care to ambulatory aged persons in some manner which cannot be separated from the facilities operated as a public nursing home.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/T